

**FINAL  
RAILROAD SAFETY  
ADVISORY COMMITTEE (RSAC)**

**Minutes of Meeting  
June 11, 2008  
Washington, D.C.**

The thirty-fifth meeting of the RSAC was convened at 9:30 a.m., in the Board Room of the National Housing Center of the National Association of Home Builders, 1201 15<sup>th</sup> Street, N.W., Washington, D.C. 20005, by the RSAC Chairperson, the Federal Railroad Administration's (FRA) Deputy Associate Administrator for Safety Standards and Program Development, Grady C. Cothen, Jr.

As RSAC members, or their alternates, assembled, attendance was recorded by sign-in log. Sign-in logs for each daily meeting are part of the permanent RSAC Docket. The records, reports, transcripts, minutes, and other documents that are made available to, or prepared for or by, the Committee are available for public inspection at the U. S. Department of Transportation docket management system Internet Web Site (<http://dms.dot.gov>). [Note: after October 1, 2007, documents will be migrated to a new Internet web site, [www.regulations.gov](http://www.regulations.gov).] Most meeting documents are also available on FRA's RSAC Internet Web Site (<http://rsac.fra.dot.gov>).

For the June 11, 2008, meeting, 18 of the fifty-four voting RSAC members were absent: The American Association of Private Railroad Car Owners (1 seat), The American Association of State Highway and Transportation Officials (AASHTO) (1 seat), The American Petroleum Institute (1 seat), The American Short Line and Regional Railroad Association (ASLRRA) (1 of 3 seats), The Association of Railway Museums (1 seat), The Brotherhood of Locomotive Engineers and Trainmen (BLET) (1 of 3 seats), The Fertilizer Institute (1 seat), The International Association of Machinists and Aerospace Workers (1 seat), The International Brotherhood of Electrical Workers (IBEW) (1 seat), The National Conference of Firemen and Oilers (1 seat), The National Railroad Construction and Maintenance Association (1 seat), Safe Travel America (1 seat), Tourist Railway Association (1 seat), The Transport Workers Union of America (TWU) (1 of 2 seats), Transportation Communications International Union (TCIU)/Brotherhood of Railway Carmen (BRC) (2 of 3 seats), The Transportation Security Administration (1 seat), and The United Transportation Union (UTU) (1 of 3 seats). Three of seven non-voting/advisory RSAC members were absent: The Labor Council for Latin American Advancement, The League of Railway Industry Women, and Secretaria de Comunicaciones y Transporte (Mexico). Total meeting attendance, including presenters and support staff, was approximately 80.

Chairperson Cothen welcomes RSAC Members and attendees. He asks Edward Pritchard (FRA–Office of Safety) for a meeting room safety briefing.

Edward Pritchard (FRA) identifies the meeting room's fire and emergency exits. He asks for volunteers with cardiopulmonary resuscitation (CPR) qualification to identify themselves. A large number of attendees acknowledge having completed this training. Edward Pritchard (FRA), and Rick Inclima (Brotherhood of Maintenance of Way Employees Division (BMWED) volunteer to perform CPR. Mr. Pritchard observes that many attendees have cellular telephones. He asks Grady Cothen (FRA–Office of Safety) to call the emergency telephone number, 911, should an emergency occur. The National Housing Center has an automated external defibrillator (AED), located at the Security Desk in the atrium lobby.

Chairperson Cothen announces that the RSAC Charter allowing RSAC to continue through May 17, 2010, has been approved.

Chairperson Cothen asks FRA Administrator Joseph Boardman for opening remarks.

Joseph Boardman (FRA) welcomes meeting attendees. He says it is good to see familiar faces. He adds, "I know that in our joint efforts, and in our various struggles, we have found reasons to affirm one another while seeking common interests. It is what we do."

Mr. Boardman says around the Nation, educational institutions have completed their commencement exercises, and young graduates have been sent on their way to face the challenges ahead." He says, "For those of you who shared in this through children, relatives and friends, congratulations." He adds, "Each meeting of the full RSAC, in its own way, a **commencement** exercise. The point is not so much "what came before," but rather, what lies ahead?"

Mr. Boardman says the economy may be slowing a bit, but the pace of change in transportation is not. He adds that "We in the railroad industry continue to face real challenges, as well."

Mr. Boardman believes that "Nothing is more constant than the desire of all of us to see an end to deaths in the railroad workplace. The year is 2008, and tragically we still have a way to go. In fact, he adds, the past few months have brought alarm. During calendar year 2008, we have experienced five (5) fatalities among roadway workers (3 railroad employees, 2 contractor employees) in circumstances that should have been prevented by Roadway Worker Protection rules and procedures."

Mr. Boardman says over the past two weeks, FRA has been reaching out to labor and management and seeking other ways of raising consciousness about the need to fully implement roadway worker protection. Currently, FRA is

conducting focused Roadway Worker Protection (RWP) audits. These audits will continue until August 31, 2008, targeting the areas where the recent fatalities have occurred. FRA will use the inspectors' data to help identify any area where compliance is an issue.

Joseph Boardman (FRA) says Industry leaders from the Association of American Railroads (AAR), the Brotherhood of Maintenance of Way Employees Division (BMWED), the Brotherhood of Railroad Signalmen (BRS), the American Short Line and Regional Railroad Association (ASLRRA), the Brotherhood of Locomotive Engineers and Trainmen (BLET), and the American Public Transportation Association (APTA) have been made aware of the FRA RWP audit program. He adds, they all agree that additional focus is needed. He says FRA is in the process of signing a joint letter expressing this need. Once signed, it will be sent out to the industry through multiple publications.

Mr. Boardman asks RSAC members to think about additional ways their organizations can promote awareness and compliance. In addition, FRA is also taking additional actions to try to strengthen safeguards against these occurrences as follows: (1) within the next few weeks, FRA will issue a proposed rule focused on adjacent track protection, drawn from the RSAC recommendations, and the agency will endeavor to complete this as an accelerated rulemaking; (2) before the year is out, FRA will issue a second NPRM to address the remainder of the issues that the RSAC has deliberated; and (3) FRA will continue to look for insights into the root causes of these events.

Mr. Boardman says FRA is conscious of the fact that the National Transportation Safety Board (NTSB) has asked FRA to extend its FRA alcohol and drug program to roadway workers and other safety-sensitive employees. He says this is something that needs to be considered very seriously, given the positive test results we have seen after too many accidents. But, he adds, it will be complicated and costly. He says FRA needs to understand clearly how any requirement would dovetail with the Federal Motor Carrier Safety Administration (FMCSA) requirements for roadway workers who hold commercial drivers licenses, and the agency needs to understand the potential impacts on shop craft employees and others. So, he adds, this will be an issue for the new Administration to resolve. But it's not too early to start the conversation and develop the issues. In the meantime, Mr. Boardman says there is room for labor organizations, railroads and rank-and-file employees to work together toward (i) a higher sense of commitment to personal responsibility, and (ii) a more manifest collective concern for those who are prisoners of addiction.

Mr. Boardman says since January 1, 2008, the railroad industry has also experienced at least four (4) fatalities in circumstances that FRA would have hoped might have been prevented by careful observation of the SOFA [Switching Operations Fatality Analysis] lifesavers. Two (2) additional fatalities have occurred involving TY&E [Train, Yard and Engine] personnel, for a total of six (6).

[Note: The remaining two fatalities involved a derailment during switching that

resulted in the employee being crushed, and failure of a hand brake assembly that apparently caused the employee to fall from a moving car.]

[Note: The five SOFA lifesavers are: (1) Secure equipment before action is taken;

(2) Protect employees against moving equipment; (3) Discuss safety at the beginning of a job or when a project changes; (4) Communicate before action is taken; and (5) Mentor less experienced employees to perform service safely.]

Joseph Boardman (FRA) says he suspects FRA and the railroad industry shares enormous frustration as they look at the circumstances of these events and see common elements that appear in decades of FRA fatality investigation reports, as well as strange and unique factors that seem to defy any easy answers. He says one of these events apparently involved a failed safety appliance, and to a large extent FRA knows what to do about that. But, he adds, what about the more common cases involving mis-communication or loss of situational awareness? He says FRA will continue to look at the circumstances of these events. He welcomes suggestions for actions that FRA and the railroad industry might take to address this tragic loss of life.

Finally, Mr. Boardman says, he would be remiss if he failed to mention FRA's and the railroad industry's regret over the loss of a railroad signalman struck while working on a fully deployed highway-rail crossing gate arm and a railroad policeman who died in a motor vehicle accident. He says some could argue that these deaths belong in another column on the DOT ledger. But, he adds, in reality, these are individuals who belonged to the railroad community.

Mr. Boardman describes five themes for FRA's Safety Re-authorization. They are:

(1) respect for people and the diversity of their gifts; (2) understand that our values precede policies and practices; (3) the need to agree on the right to be needed as part of the transportation network; (4) the need to develop relationships with each other; and (5) the need to understand that relationships are very important.

Mr. Boardman tells a story about a guard "snake," named Nate. He says Nate was instructed to stay in the desert and guard a lever. If the lever was moved, it would destroy the world. One day, there was a dust cloud, which started moving boulders toward the lever. Nate moved over to deflect a boulder from hitting the lever, and was killed. Mr. Boardman says the moral to this story is "Better Nate, than lever."

Mr. Boardman comments on FRA's major regulatory actions that are pending resolution. For FRA's Electronically Controlled Pneumatic (ECP) Brake Rule, the comment period is closed. He says the agency has reviewed the comments it received and has placed the final rule in clearance. He says FRA anticipates issuing a final rule on ECP Brakes before November 1, 2008. He thanks the Norfolk Southern Company and BNSF Railway Company for stepping forward to

get some initial trains running. He adds, FRA has also received a waiver application from the Union Pacific Railroad for use of ECP Brakes in intermodal service.

Mr. Boardman says all reports indicate that the pilot trains are doing very well with ECP Brake technology. He says the economic analysis that FRA has prepared for the final rule suggests that railroads and shippers have every reason to move forward aggressively toward implementation of this technology. He says FRA will proceed with the business case validation studies, and if they raise caution flags, then so be it. He believes the business case for ECP Brake use is clear. He adds, on the issue of ECP Brakes, the Association of American Railroads continues to lead the way with standards that will ensure interoperability and a technology that can continue to grow. He asks for everyone to pitch-in and help get this job done.

In another regulatory effort, Mr. Boardman says most of today's participants know that addressing issues involving PIH [poison inhalation hazard] or TIH [toxic inhalation hazard] tank cars has been a passion of his. He thanks RSAC members who participated in the technical exchange symposium and the public comment period following the issuance of a Notice of Proposed Rulemaking (NPRM) on this topic.

Joseph Boardman (FRA) says FRA is standing by to receive a promised agreement between shippers and carriers on interim car specifications. The agency takes the point that the market needs to be settled so that sufficient cars are available to transport essential commodities. Therefore, FRA will make it a priority to address the suitability of what is proffered and the issue of grandfathering. He understands that the tank car engineering community is not yet confident that we can achieve the kind of performance that DOT is asking for, within 286,000 pounds gross weight, and without significant loss of lading per car. However, he asks FRA to redouble its efforts to bring the engineering community together, validate research with full scale sub-assembly tests, and assist the Next General Rail Tank Car Program in developing viable design options. And, he adds, FRA will do its best to work with the other comments filed in the docket.

Mr. Boardman cautions the hazmat [hazardous materials] community that it is not government's responsibility to provide suitable technology. He says "We at DOT will be pleased if we can provide analytical tools, illustrative concepts, and an evaluation of the likely requirements on builders and users of plausible solutions to this issue." However, he adds, "Industry should not shrink from its responsibility to envision approaches that are technically feasible and commercially sound. Now is not a time to sit back and wait for the next shoe to fall; now is the time to innovate, test, and demonstrate."

Moving closer to the core work of the RSAC, FRA Administrator Boardman addresses the Medical Standards task and the Bridge task.

Mr. Boardman says FRA's undertaking to envision an effective and efficient ***Medical Fitness for Duty*** program has yielded both a broad set of agreed-upon principles and a significant number of issues that appear to be barriers to full consensus. He says he has been briefed by FRA's staff on the sticking points, and told FRA's staff to press ahead. He says the public expects that FRA will take care of business in this regard, and the recent public attention to the smoking-cessation drug Chantix® has once again illustrated that it matters what medications safety-critical employees are using. He adds, there are also no easy answers when it comes to the management of medical conditions or the management of medication use—and of course the two are most commonly bound up together. He says FRA must also be conscious that these issues are part of the human factors that loom large in the safety of railroad operations.

Joseph Boardman (FRA) is very pleased that both the railroads and labor organizations recognize the importance of retaining skilled workers. He says FRA wants that too, and is willing to accept some risk, as long as the risk is well understood and the necessary parties are working to control it. Therefore, he says, FRA is going to propose some tie breakers and offer the working group a draft NPRM. He asks that the Medical Standards Working Group take the draft NPRM seriously.

Meanwhile, Mr. Boardman encourages the Physicians' Task Force of the Medical Standards Working Group to move ahead on draft medical guidelines. He believes that as the Physicians' Task Force shows success, confidence will be rapidly built that this is an initiative that will contribute to employee health and public safety without asking any party to bear burdens that are unreasonable.

Mr. Boardman says the Railroad Bridge Working Group is well on its way to accomplishing its immediate goal before Labor Day. The major railroads and a large group of short line and regional railroads have given FRA an updated count of the Nation's railroad bridges. In addition, the Railroad Bridge Working Group is well along with compiling a compendium of their bridge management practices. In this instance, it appears that the RSAC process itself is having a beneficial effect, by bringing these issues into focus on the individual railroads, and giving the responsible persons a chance to shine a new light on these practices and their documentation. Mr. Boardman says this is good, because it gives each railroad an opportunity to compare their practices with each other as well as with FRA guidelines, and work out the details of implementation that best suit their own property. He adds, the Railroad Bridge Working Group will be meeting tomorrow [June 12, 2008] and Friday [June 13, 2008], and one more meeting is scheduled for August. He says the Railroad Bridge Working Group should be able to tie a bow around this project in August 2008, and present their work and recommendations to the full RSAC at its next scheduled meeting on September 10, 2008. He says the AREMA [American Railway Engineering and Maintenance of Way Association] meeting will be in late September 2008.

In closing, Mr. Boardman says school is out and it's already been hot as blazes

in the Nation's Capital. However, he adds, the work of railroad safety is not seasonal. While he hopes that RSAC meeting attendees will find some personal time to gather with family and friends this summer, he asks that meeting attendees also keep up the good work of saving lives and preventing injuries.

Joseph Boardman thanks RSAC members for their attendance, and for their attention as the day progresses.

Chairperson Cothen thanks FRA Administrator Boardman for opening remarks. He acknowledges the following meeting attendees. Peter Cannito (American Public Transportation Association (APTA), who is retiring from Metro-North Railroad; James Grady (Association of American Railroads (AAR), who is replacing the AAR's Patrick Ameen; Ester White (Federal Transit Administration), who is sitting-in for RSAC Member Levern McElveen; Don Pulciani (Transport Canada); and Keith Shearer (AAR), representing the Canadian Pacific Railway Company.

Ross Capon (National Association of Railroad Passengers (NARP)) introduces NARP's newest staff member, Sean Jeans-Gail, saying this is Mr. Jeans-Gail's first day on the job and first RSAC meeting.

Chairperson Cothen asks Charles Bielitz (FRA—Office of Safety) for a report on Passenger Safety (PS) Working Group (WG) activities.

Charles Bielitz (FRA) uses a series of Microsoft PowerPoint Presentation slides, projected onto a screen. Photocopies of the Microsoft PowerPoint Presentation were distributed to meeting attendees. All meeting handouts will be entered into the RSAC Docket and are not excerpted in their entirety in the RSAC Minutes. Under the slides, "PSWG Task Force Activities," Mr. Bielitz says (1) the PS WG's Crashworthiness Task Force has received comments on its Notice of Proposed Rulemaking (NPRM) and these are being evaluated for preparation of the Final Rule; (2) the PS WG's Vehicle-Track Interaction Task Force is preparing an NPRM, based on approval of its recommendations made by the full RSAC on February 20, 2008; (3) the PS WG's Emergency Preparedness Task Force is: (a) preparing a second NPRM, based on recommendations approved by the full RSAC on February 20, 2008; (b) monitoring/ advising the conduct of research via FRA's Small Business Innovative Research (SBIR) Program including: (i) wireless passenger emergency communication systems, i.e., feasibility assessment, and developing a back-up public address system to the main train line-dependent system; and (ii) removable panels in end-frame doors, i.e., feasibility assessment, allowing railroads to maintain or exceed current safety levels, which may exceed existing federal and industry requirements, and security requirements. Mr. Bielitz says the primary exit strategy for passengers in an emergency is to go to an adjacent car. However, he adds, sometimes this is not possible.

Mr. Bielitz asks Daniel Knotte (FRA—Office of Safety) to continue the report on PS WG activities with a presentation on General Passenger Safety (GPS) Task

Force (TF) activities.

Daniel Knoté (FRA) uses a series of Microsoft PowerPoint Presentation slides, projected onto a screen. Photocopies of the Microsoft PowerPoint Presentation were distributed to meeting attendees. All meeting handouts will be entered into the RSAC Docket and are not excerpted in their entirety in the RSAC Minutes. Under the slides, GPS–TF, Update Report,” Mr. Knoté says the current tasks before the GPS TF are:

- (1) changes/additions to four areas of 49 Code of Federal Regulations (CFR) § 239;
- (2) proposal for a System Safety Regulatory approach to managing hazards; (3) train door operating procedures/mechanical requirements; and (4) second train in station and trespasser issues.

Under the slide, “49 CFR 239 Changes/Additions,” Mr. Knoté says the GPS TF agreed in principle to regulatory language for: (1) changes to Emergency Preparedness Plan approval requirements; (2) changes to control center staff training requirements;

- (3) adding an 8<sup>th</sup> requirement to Emergency Preparedness Plans for “special needs persons,” i.e., disabled, elderly, and small children; and (4) changes to Efficiency Testing requirements. Mr. Knoté says once effected, this change will allow railroads to conduct efficiency testing for Part 239 requirements within 49 CFR § 217.9 or to conduct efficiency testing for Part 239 requirements in a separate program that follows the requirements of 49 CFR § 217.9. He adds, the frequency of efficiency testing is still being worked-out by the GPS TF.

Under the slide, “System Safety Regulatory Approach,” Mr. Knoté says the GPS TF is: (1) retaining the benefits from APTA’s System Safety Program; (2) evaluating a variety of approaches to System Safety, e.g., the Canadian Model; the Pipeline Model; and

- (3) focusing on an effective hazard management program that has built-in requirements for hazardous analysis. He says the System Safety Program will be required for all intercity passenger railroads, contract operators, and host railroads. Mr. Knoté says FRA’s System Safety Program will include (a) a plan approval process; (b) an internal audit requirement; and (3) an external audit requirement. He adds, a sub group of the GPS TF is currently reviewing documents to help develop the specifics for FRA’s System Safety Program.

Under the slide, “Train Door Assessment Group,” Mr. Knoté says FRA is conducting assessments of train door operations on passenger equipment. He says FRA is reviewing: (1) crew operating procedures; (2) door design features—mechanical/manual; and (3) door maintenance procedures.

Under the slide, “Other Task Force-Related Activity,” Mr. Knoté explains that FRA, the Federal Transit Administration (FTA), and Caltrain held a Right-of-Way Fatality and Trespass Prevention Workshop at Caltrain Headquarters on April 1-2, 2008. He says 18 organizations presented a variety of effective practices. He says a consolidated report is being prepared. He says the next steps will be



coordinated with FRA's Highway-Rail Grade Crossing and Trespassing Prevention Division with a likely follow-up workshop in 2009.

Charles Bielitz (FRA) and Daniel Knotte (FRA) ask for questions.

With no questions, Chairperson Cothen asks Gordon Davids (FRA—Office of Safety) for a report on Railroad Bridge (RB) Working Group (WG) activities.

Gordon Davids (FRA) uses a series of Microsoft PowerPoint Presentation slides, projected onto a screen. Photocopies of the Microsoft PowerPoint Presentation were distributed to meeting attendees. All meeting handouts will be entered into the RSAC Docket and are not excerpted in their entirety in the RSAC Minutes. Under the first slide, Mr. Davids explains that RSAC Task No.: 08-01 was accepted by the full RSAC on February 10, 2008. He says the RB WG is to report the following to the FRA Administrator: (1) current state of railroad bridge safety management; (2) update the findings and conclusions of the 1993 Summary Report of the FRA Railroad Bridge Safety Survey; and (3) make recommendations for further action.

Under the slides, "Detailed Description of Task," Mr. Davids outlines the following:

(1) Review bridge safety management of the seven Class I freight railroads, Amtrak, commuter railroads, and smaller freight railroads; (2) Review to evaluate currency and effectiveness of the following: (a) FRA's Statement of Agency Policy on the safety of railroad bridges (Appendix C, 49 CFR Part 213); and (b) FRA Railroad Safety Advisory 2007-03; (3) Review and incorporate findings, as appropriate, of the Bridge Safety Task Force of the American Short Line and Regional Railroad Association (ASLRRA); and (4) Develop recommendations for FRA to: (1) best influence the adoption and implementation of effective industry practices for railroad bridges; (2) maintain railroad bridge safety; and (3) preserve the service of railroad bridges.

Under the slide, "Timeline," Mr. Davids outlines the following: (1) February 10, 2008—the full RSAC accepts Task No.: 08-01; (2) March 14, 2008—the RB WG was constituted; (3) April 24-25, 2008—First meeting of RB WG; (4) June 12-13, 2008—Second meeting of RB WG is scheduled; and (5) November 8, 2008—Findings of full RSAC due to FRA Administrator.

Under the slides, "Progress," Mr. Davids lists the following: (1) Railroad organizations (AAR and ASLRRA are cooperating to provide FRA with an updated count of railroad bridges; (2) RB WG members are cooperating to develop and refine common policies for inspection and management of their bridges; (3) Railroad policies are expected to provide for internal audits of bridge management practices; (4) The ASLRRA has established a Railroad Bridge Task Force; (5) the ASLRRA Railroad Bridge Task Force is (a) reviewing the implementation of FRA-proposed risk-based factors for the selection of small railroads for bridge evaluation; and (b) recommending effective procedures for managing bridge safety; and (6) Railroads of all sizes, including most Class I

railroads, are represented on the RB WG.

Under the slide, "Expected Benefits," Mr. Davids says the following: (1) FRA will have a record of bridge management policies of larger railroads; (2) Small railroads will have a roadmap available for use in developing their bridge policies; and (3) Internal audits by larger railroads will enable more effective evaluation by railroad management and FRA.

Gordon Davids (FRA) asks for questions.

With no questions of Gordon Davids, Chairperson Cothen announces the morning break.

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M O R N I N G   B R E A K   10:30 A.M. - 10:50 A.M.

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Chairperson Cothen calls the meeting to order. He gives a report on Locomotive Safety Standards (LSS) Working Group (WG) activities for FRA's LSS WG Team Leader, George Scerbo (FRA—Office of Safety) as follows: progress is being made on (1) a requirement for alerters in freight locomotives for new equipment; (2) a draft NPRM for locomotive electronics; (3) dealing with an industry request to extend the periodic 92-day locomotive inspection to 184-days, or, alternatively to use "performance standards;" and (4) dealing with remote control locomotive issues. Chairperson Cothen says the next scheduled LSS WG meeting will be August 5-6, 2008, in Chicago, Illinois. He asks for questions.

With no questions on LSS WG activities, Chairperson Cothen introduces FRA's new physician employee, Bernard J. Arseneau (FRA—Office of Safety). Mr. Arseneau will represent the agency on the Medical Standards (MS) Working Group's (WG) Physician's Task Force to help draft and maintain Medical Guidelines for the railroad industry.

Chairperson Cothen asks Cynthia Gross (FRA—Office of Safety) for a report on MS WG activities.

Cynthia Gross (FRA) uses a series of Microsoft PowerPoint Presentation slides, projected onto a screen. Photocopies of the Microsoft PowerPoint Presentation were distributed to meeting attendees. All meeting handouts will be entered into the RSAC Docket and are not excerpted in their entirety in the RSAC Minutes. Under the first slide, Ms. Gross says between December 12-13, 2006, and April 22-23, 2008, the MS WG has met 10 times. In addition, the Physicians Task Force, which is working on medical issues and Medical Guidelines, has met 7 times between July 24, 2007, and February 13, 2008, and there was a meeting to discuss railroad job descriptions to be covered by proposed medical standard rules on April 14, 2008.

Under the slide, "All Sections Discussed," Ms. Gross outlines the topics currently under consideration for inclusion in a proposed Medical Standards rule for railroad employees. The proposed rule heading sections are: (1) § 2XX.1, Purpose and scope; (2) § 2XX.3, Application; (3) § 2XX.5, Definitions; (4) § 2XX.7, Coverage; (5) § 2XX.9, Employer Responsibilities—Medical fitness for duty programs; (6) § 2XX.11, Triggering criteria and medical content of fitness for duty assessments; (7) § 2XX.12, Fitness for duty assessment; (8) § 2XX.13, Fitness for duty classifications; (9) § 2XX.15, Medical Guidelines; (10) § 2XX.17, Employee Responsibilities; (11) § 2XX.19, Required Information, Records and Record Keeping; (12) § 2XX.25, Management of Therapeutic Drug Use; (13) § 2XX.27, Dispute Resolution—Appeals of Decisions Regarding Fitness for Duty; (14) § 2XX.29, Transferability of Medical Certification; (15) § 2XX.31, Confidentiality; (16) § 2XX.33, Access to facilities and records; and (17) § 2XX.35, Effective dates.

Cynthia Gross (FRA) says consensus has been reached on some language for the draft rule text. In addition, FRA has identified the points of departure that continue to exist between the participants of MS WG. She says FRA will work on language for a Notice of Proposed Rulemaking internally, with frequent consultation with MS WG members by electronic mail to resolve these issues. She says the next meeting of the Physicians Task Force is scheduled for June 23-24, 2008. Ms. Gross asks for questions.

With no questions for Cynthia Gross on MS WG activities, Chairperson Cothen asks Ronald Ries (FRA—Office of Safety) for a presentation on the FRA/Volpe National Transportation Systems Center Report, ***Private Highway-Rail Grade Crossing Safety Research and Inquiry***.

Ronald Ries (FRA) uses a series of Microsoft PowerPoint Presentation slides, projected onto a screen. Photocopies of the Microsoft PowerPoint Presentation were distributed to meeting attendees. In addition, a copy ***Private Highway-Rail Grade Crossing Safety Research and Inquiry***, Final Report, dated May 2008, was made available to all meeting attendees. All meeting handouts will be entered into the RSAC Docket and are not excerpted in their entirety in the RSAC Minutes. Under the slide, "Background," Mr. Ries outlines the following: (1) 1993—FRA initiated discussion; (2) 1994—U.S. Department of Transportation (USDOT) Action Plan; (3) National Transportation Safety Board (NTSB) passive crossing study; (4) 1999—NTSB Accident Report (at Portage, Indiana private crossing); and (5) 2004—USDOT.

Under the slide, "Safety Inquiry Activities," Mr. Ries lists the following: (1) published Federal Register Notices (preceding public meetings); (2) established an Internet Web Site; (3) established an electronic docket; (4) conducted a survey of current Federal, State, and Local Authorities; (5) performed data analysis; (6) conducted interviews of international partners; (7) held five public meetings; (8) discussed at a Transportation Research Board meeting; and (9) examined accident investigation summaries.

Under slides, "Private Crossing Findings," Mr. Ries summarizes the findings of ***Private Highway-Rail Grade Crossing Safety Research and Inquiry***, Final Report, dated May 2008, as follows: (1) Safety at private crossings is not improving as rapidly as at public crossings (public funding helps improve safety; public funding is generally not available at private crossings); (2) Accident, incident, and casualty rates may have declined (inventory data lacks traffic counts); (3) Accident, incident, and casualty counts remain stagnant; (4) Opportunities for accidents may rise (as population increases, there are changes in land use with subsequent growth in highway and rail traffic); (5) There is no cohesive policy or regulatory structure (redundant crossings; inadequately designed crossings; poorly maintained crossings); (6) Numerous populations are at risk (motorists; train occupants; others in the vicinity of the crossing); (7) States and local authorities generally lack jurisdiction; (8) Private crossings are created without considering public safety, or necessity; (9) There are no standards (in most States) for signage or roadway design; (10) Most private crossings lack agreements; (11) Public use of private crossings is a key safety concern; (12) Local planning departments are not involved in private crossing decisions; (13) Railroad authority over private crossings is limited; (14) Efforts to make improvements at private crossings are hampered; (15) Education programs about private crossings may help; (16) Law enforcement programs at private crossings are likely ineffective; (17) Effective solutions to private crossing concerns require collaboration among private crossing stakeholders; railroads; local planning approval authorities; state agencies; standard-developing organization; and the U.S. Department of Transportation (USDOT); (18) FRA has relevant authority over private crossing matters; and (19) Other USDOT transportation modes should also participate in this process.

Under the slide, "Report Status," Mr. Ries says ***Private Highway-Rail Grade Crossing Safety Research and Inquiry***, Final Report, was completed in May 2008, and was published in June 2008. He says the report's Appendices will be published under separate cover.

Under the slide, "Next Steps," Mr. Ries says private crossing issues can be handled by (1) Policy and Guidance; or (2) Legislation and Regulation.

Ron Ries (FRA) asks for questions.

With no questions of Mr. Ries, Chairperson Cothen asks George Elsmore (Association of State Rail Safety Managers (ASRSM)) for a presentation on Crossing Blocked by Stopped Trains.

George Elsmore (ASRSM) explains that in the materials handed-out to RSAC attendees is a letter from Rodney P. Massman, Administrator of Railroads, Missouri Department of Transportation Multimodal Operations, on behalf of the Executive Committee of the ASRSM, to Jo Strang, FRA Associate Administrator for Safety. In prepared remarks, Mr. Elsmore explains that trains blocking public

highway-rail grade crossings have a tremendous impact on public safety (emergency response, traffic flow, etc.). He says a growing trend in many state court decisions has been to invalidate all powers of state and local governments to prevent stopped trains from blocking public grade crossings. He says the ASRSM requests that FRA begin a rulemaking process to determine effective measures to regulate the blocking of highway rail grade crossings by trains. He says history has shown that grade crossings blocked by stopped trains lead to poor decisions by the general public, including trespassing by pedestrians, drivers ignoring active warning devices including driving around lowering/lowered gates, and the detouring of motor vehicle traffic to crossings equipped only with passive warning signs when crossings equipped with active warning devices are blocked.

Kelly Haley (Brotherhood of Railroad Signalmen (BRS)) asks for a copy of George Elsmore's prepared remarks.

Chairperson Cothen asks George Elsmore (ASRSM) to submit a copy of his prepared remarks to the RSAC Coordinator, Larry Wooverton (FRA–Office of Safety).

Larry Breeden (Association of American Railroads (AAR)) comments that trains do not intentionally block highway-rail grade crossings.

Larry Mann (United Transportation Union (UTU)) asks if the full RSAC will entertain a motion for a Working Group to investigate and resolve safety issues relating to trains that block highway-rail grade crossings.

Chairperson Cothen says FRA's available staff is tapped-out at this point, as the agency tries to complete projects before the conclusion of the current Administration's term of office. However, he adds, FRA can in the future consider offering a task on this issue. He says FRA's degree of awareness of this issue is high. He says FRA will take under advisement, a study effort into the effect of trains blocking highway-rail grade crossings.

Chairperson Cothen says following the lunch break, William Schoonover (FRA–Office of Safety) will make a presentation on the tank car rule, after which Mr. Schoonover will answer questions on tank car routing issues. In other rulemaking areas, Chairperson Cothen says FRA will issue a proposed rule on Accident/Incident Reporting shortly, i.e., 49 CFR § 225. He says this will be a "clean-up" to the existing rule in which some additional accident/incident "codes" will be added to help future accident investigations. However, he adds, if significant issues are raised during the rulemaking comment period, FRA can re-open the Accident/Incident Working Group to help resolve these issues. He says the Association of American Railroads has been working on the issue of Hours of Service Act electronic record keeping.

Chairperson Cothen asks for questions.

With no questions, Chairperson Cothen asks for additions and corrections the Minutes for the February 20, 2008, meeting of the full RSAC, held in Washington, DC.

With no additions or corrections to the Minutes for the February 20, 2008, meeting of the full RSAC, Chairperson Cothen asks for a motion to approve the Minutes for the February 20, 2008, meeting of the full RSAC, as submitted.

Robert VanderClute (AAR) moves that the Minutes for the February 20, 2008, meeting of the full RSAC be approved, as submitted.

Rick Inclima (Brotherhood of Maintenance of Way Employes Division (BMWED) seconds the motion.

BY UNANIMOUS HAND VOTE, THE FULL RSAC APPROVES THE MINUTES FOR THE FEBRUARY 20, 2008, MEETING, AS SUBMITTED.

Chairperson Cothen announces the lunch break.

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L U N C H   B R E A K   11:45 A.M. - 1:00 P.M.

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Chairperson Cothen reconvenes the meeting. He asks William Schoonover (FRA–Office of Safety) for a presentation on “HM-246, Enhancing Railroad Tank Car Safety.”

William Schoonover (FRA) uses a series of Microsoft PowerPoint Presentation slides, projected onto a screen. Photocopies of the Microsoft PowerPoint Presentation were distributed to meeting attendees. All meeting handouts will be entered into the RSAC Docket and are not excerpted in their entirety in the RSAC Minutes. Under the slide, “Events Leading Up to The NPRM,” Mr. Schoonover lists the following: (1) there were a series of accidents involving TIH [toxic inhalation hazard]; (2) there were industry attempts to reach consensus on improvements; (3) there were AAR-driven actions and circulars; (4) there was a tank car/chemical industry call for government action; (5) there were public meetings; and (6) there was private interest involvement in a tank car safety project.

Under the slide, “The Proposal,” Mr. Schoonover says the Notice of Proposed Rulemaking (NPRM) was issued on April 1, 2008. The comment period closed on June 2, 2008. However, FRA is still accepting “late” comments. He says there is a two-fold approach to the problem: (1) engineering controls; and (2) operational controls.

Under the slide, “Public Input,” Mr. Schoonover lists the following: (1) submissions by the public to the docket, i.e., HM-246 and FRA 2006-25169; and (2) public participation in Hearings: (a) May 7-8 Technology Transfer

symposium; (b) May 14-15 Hearing on chlorine and anhydrous ammonia; (c) May 28 Hearing on other commodities; and (d) May 29 Hearing on operational concerns. Mr. Schoonover says these materials are all available at <http://www.regulations.gov>.

Under the slide, "What We Propose (Car Enhancements)," Mr. Schoonover says (1) the proposed performance standard is to resist head/shell puncture or other catastrophic loss under forces at 50 mph; and (2) the proposed performance standard applies to all cars carrying TIH materials.

Under the slide, "Car Requirements," Mr. Schoonover says a 25 miles per hour (MPH) shell test and 30 MPH head would be validated by (a) full-scale testing; (b) component testing; and/or (c) modeling/analysis.

Under the slide, "What We Propose (Operations)," Mr. Schoonover outlines the following: (1) a 50 MPH speed restriction; and (2) as an interim measure: (a) a 30 MPH speed restriction in dark (non-signaled) territory based on: (i) higher train mile collision risk; and (ii) derailment risk absent broken rail detection; and (3) exceptions would be made for territories with mitigations such as Positive Train Control, SPMS, and track integrity circuits.

Under the slide, "Proposed Timeline," Mr. Schoonover lists the following: (1) 2 years for engineering development; (2) 6 years for fleet replacement; (3) 50 percent completion by end of year 3; (4) pre-1989 tank car removal from fleet by end of year 5; and (5) Report to FRA on progress.

Under the slide, "What We are Not Proposing," Mr. Schoonover emphasizes the following: Top-Fitting Protection.

Under the slide, "Next Steps," Mr. Schoonover lists the following: (1) review comments (written and oral (from Hearings)); (2) consider interim measures to address transitional needs for tank cars (FRA is awaiting a joint industry submission); (3) begin the development of a final rule; and (4) continue the testing program.

William Schoonover (FRA) says FRA is working on a Final Rule, based on comments received for the Interim Final Rule. He asks for questions.

Michael Rush (AAR) asks about a time table for getting the Final Rule on railroad tank car safety out.

Mr. Schoonover responds that FRA is working on the Final Rule on railroad tank car safety as rapidly as it works on any of its decisions.

With no further questions of William Schoonover, Chairperson Cothen asks Douglas Taylor (FRA—Office of Safety) and Dennis Yachechak (FRA—Office of Safety) for a report on Railroad Operating Rules (ROR) Working Group (WG)

activities.

Douglas Taylor (FRA) uses a series of Microsoft PowerPoint Presentation slides, projected onto a screen. Photocopies of the Microsoft PowerPoint Presentation were distributed to meeting attendees. All meeting handouts will be entered into the RSAC Docket and are not excerpted in their entirety in the RSAC Minutes. He says FRA intends to publish the Final Rule for 49 CFR §§ 217 and 218 in the *Federal Register* on Monday, June 16, 2008.

Under the slide, "Status of Petitions for Reconsideration and Final Rule Amendments to Part 218–Subpart F," Mr. Taylor says the American Public Transportation Association (APTA) and the AAR requested a delay in the implementation dates of the rule. He says in granting this request, FRA changed the July 2008, references in the NPRM to January 2009, in the Final Rule. He says the January 2009 references in the NPRM will be changing to July 2009 in the Final rule. He explains that the date changes will allow for the implementation of the rule over a longer period of time to give carriers a chance to develop and implement training programs.

With respect to the AAR's Petition requesting exceptions to the use of shove lights and the combined Labor Petition objecting to the AAR's exceptions for shove light use, Mr. Taylor says FRA will grant the AAR's Petition concerning shove light use with conditions.

With respect to the AAR's petition to either eliminate the "Good Faith Challenge," or to mirror the Roadway Worker Protection Rules regarding the "Good Faith Challenge," Mr. Taylor says FRA denies this request. He adds, the Final Rule "Good Faith Challenge" provisions will remain as written in the NPRM.

With respect to the combined Labor Petition to eliminate individual liability for civil penalties, Mr. Taylor says FRA dismisses this request, adding that civil penalties are controlled by statute.

Douglas Taylor (FRA) says FRA's responses to these Petitions along with Final Rule Amendments are to be published in the *Federal Register* prior to June 30.

Under the slide, "Operating Rules Working Group Meeting–Grapevine, Texas, May 21-22, 2008," Mr. Taylor says the ROR WG discussed FRA, Labor, and Management proposals to respond to National Transportation Safety Board Safety Recommendations concerning (1) "After Arrival Train Authority; and (2) the use of personal cellular telephones in locomotive cabs. He says FRA will present a final draft regulation for After Arrival Train Authority at the next ROR WG meeting, i.e.

September 25-26, 2008. He says FRA will also present a final version of a Safety Advisory on cellular telephone use at the September 25-26, 2008, ROR WG meeting.

Under the slides, "Highway-Rail Grade Crossings," Mr. Taylor says the ROR WG



is establishing a Task Force to review historical highway-rail grade crossing collisions, resulting from the short warning of signal activation. He notes that railroads already report and FRA investigates signal activation failures. He says FRA is considering enhancements to reporting codes on Rail-Highway Grade Crossing Accident/Incident Reporting Form FRA F6180.57. However, for the longer term, FRA is considering the utility and feasibility of capturing “near hit” data on operational interference with warning device functioning that leads to no warning or short warning. Examples include:

(1) accelerating on the approach to the highway-rail grade crossing; (2) misuse of cut-out switches; (3) equipment standing on fouling circuits causing them to “time out;” and (4) failure to observe stop and flag orders when continuously operating systems must be removed from service for repairs.

Douglas Taylor (FRA) says the next ROR WG meeting is scheduled for September 25-26, 2008, in Chicago, Illinois. He asks for questions.

William Browder (AAR) asks if the 4 or 5 years of work that has been spent on revising the Rail-Highway Grade Crossing Accident/Incident Reporting Form FRA F6180.57 is to be thrown out the window?

Chairperson Cothen says some of the work effort on FRA Form F6180.57 will move during the proposed revisions to Part 225 regulations that FRA will issue shortly. He says the Agency needs to move on this issue one step at a time.

Patrick Sullivan (National Transportation Safety Board) asks what happened to the Locomotive Safety Standards (LSS) Working Group (WG) and Railroad Operating Rules (ROR) WG discussion on recording locomotive cab voice conversations?

Chairperson Cothen says both the LSS WG and the ROR WG discussed this topic which goes into the issue of recording the private conversations of crew members. He says FRA has not decided how it will resolve this issue.

Chairperson Cothen asks Edward Pritchard (FRA—Office of Safety) for a report on Track Safety Standards (TSS) Working Group (WG) activities.

Edward Pritchard (FRA) uses a series of Microsoft PowerPoint Presentation slides, projected onto a screen. Photocopies of the Microsoft PowerPoint Presentation were distributed to meeting attendees. All meeting handouts will be entered into the RSAC Docket and are not excerpted in their entirety in the RSAC Minutes. Mr. Pritchard says he is substituting for the TSS WG Team Leader, Kenneth Rusk (FRA—Office of Safety), who was unable to attend today’s meeting.

Under the slide, “Background,” Mr. Pritchard says (1) On February 22, 2006, the full RSAC approved Task No.: 06-02, which tasked the TSS WG to review and revise Continuous Welded Rail (CWR) provisions of the track safety standards; and (2) On February 22, 2007, the full RSAC approved Task No.: 07-01, which

tasked the TSS WG to: (a) review controls applied to reuse of “plug rail;” (b) review the issue of cracks emanating from bond wire attachments; (c) consider improvements in the Federal Track Safety Standards related to the fastening of rail to concrete crossties; and (d) ensure a common understanding within the regulated community concerning requirements for internal rail flaw inspections.

Under the slide, “New Brighton Derailment,” Mr. Pritchard describes an October 20, 2006, train accident in New Brighton, Pennsylvania, which resulted in a hazardous materials release, and a fire which burned for 48 hours. He says seven blocks were evacuated. He says the National Transportation Safety Board (NTSB) determined that the derailment resulted from the presence of numerous detail fracture-type defects that resulted in the catastrophic failure of the rail section.

Under the slide, “NTSB Recommendations to FRA,” Mr. Pritchard lists the following:

(1) Review all internal rail defect detection procedures to eliminate exceptions to the requirement for an uninterrupted continuous search for rail defects; (2) Require railroads to develop rail inspections and maintenance programs that will identify and remove internal defects before they reach critical size and result in catastrophic rail failure; and (3) Require railroads to use methods that accurately measure head wear to ensure deformation of the rail head does not affect the accuracy of the test.

Under the slide, “Rail Integrity Task Force,” Mr. Pritchard states the Problem Statement and Rail Integrity Task Force Objectives as follows: (1) Study “loss of bottom” condition for frequency of occurrence, affect on production, and consequences of invalid test; (2) Make recommendations that define an invalid test; (3) Define test car operators role in determining invalid test areas (too much latitude?); and (4) FRA Rail Integrity personnel to perform random audits on flaw detection process and operator performance; Initiate study on affects of head wear on flaw detection systems.

Under the slide, “Concrete Tie Task Force,” Mr. Pritchard states the Problem Statement and Concrete Crosstie Task Force Objectives as follows: (1) Respond to the NTSB report calling for Concrete Crosstie Standards in lower track classes; (2) Develop lower speed standards for track classes 2-5; (3) Understand the science of concrete crosstie failure; (4) Review the Volpe National Transportation Systems Center’s research modeling and analysis for concrete crossties; (5) Develop concrete crosstie definition and application (what constitutes a defective crosstie?); (6) Develop a mission statement and framework; (7) Use a performance-based system approach (crosstie and fastener); and (8) Develop both manual and automated inspection procedures/application (safety versus maintenance).

Under the slide, “Three meetings have been held by each Task Force,” Mr. Pritchard says in addition to meetings held November 26-29, 2007, February 12-14, 2008, and April 15-17, 2008, the Rail Integrity Task Force and Concrete

Crosstie Task Force will meet next on July 8-10, 2008, at the Crowne Plaza Hotel, Silver Spring, Maryland.

Under the slide, "CWR," Mr. Pritchard says FRA is preparing a Notice of Proposed Rulemaking for CWR, based on recommendations adopted by the full RSAC at its February 20, 2008, meeting.

Edward Pritchard (FRA) asks for questions.

Chairperson Cothen says when talking about rail integrity issues, FRA will need to come before the full RSAC and ask for permission to consider Part 213 internal rail flaw detection language.

With no further questions of Edward Pritchard, Chairperson Cothen asks Jo Strang (FRA Associate Administrator for Safety—Office of Safety) for a presentation on "FRA Risk Reduction Program."

Jo Strang (FRA) uses a series of Microsoft PowerPoint Presentation slides, projected onto a screen. Photocopies of the Microsoft PowerPoint Presentation were distributed to meeting attendees. All meeting handouts will be entered into the RSAC Docket and are not excerpted in their entirety in the RSAC Minutes. Under the slide, "Readiness for Change in the U.S. Railroad Industry," Ms. Strang says (1) By 2010, the U.S. railroad industry will have hired 80,000 new railroad employees; (2) There is a strong organizational culture in the railroad industry; and (3) There is a recognition of the need, and opportunity for change in the railroad industry.

Under the slide, "Why is This Program Being Created," Ms. Strang show a line chart representation of railroad accident/incident rates between 1977 and 2006. She says there was a better than 50 percent reduction in accident/incident rates between 1977-1985. However, there has been little change in railroad accident/incident rates from 1985 to the present.

Under the slide, "Multiple Barriers/Defenses Using Rule-Based Approach," Ms. Strang show a pictogram depicting barriers and defenses between carriers, labor and FRA using the traditional rule-based approach to accident/incident reduction.

Under the slide, "What is the Risk Reduction Program (RRP)," Ms. Strang says RRP is an FRA-led, industry-wide initiative to reduce accidents and injuries, and build strong safety cultures, by developing innovative methods, processes, and technologies to identify and correct individual and systemic contributing factors using "upstream" predictive data.

Under the slide, "What will result from RRP," Ms Strang says RRP will reduce accidents/incidents because of: (1) Better management and use of precursor (predictive) data, not just reactive data; and (2) A safety learning culture that allows open disclosure about safety without fear.

Under the slide, "How We Will Do This," Ms. Strang says FRA will continue to strengthen regulatory enforcement approaches while adding complementary non-enforcement approaches. She shows a graphic depiction of the contribution to safety of a regulatory approach alone and, over time, an improvement to safety by a combination of a regulatory approach and a non-regulatory approach.

Under the slide, "An Overall View," Ms. Strang shows the depiction of a floating "iceberg," in which the visible portion of the iceberg consists of reportable accidents (FRA's database) and accountable accidents (from railroad records). These are the Reactive Risk Management Systems. However below the visible portion of the floating "iceberg" are the Proactive Risk Management Systems that include (1) leadership factors; (2) organization/workplace factors; (3) at-risk behaviors; (4) close calls; and (5) inspections and audits.

Under the slide, "Current RRP Status," Ms. Strang lists the following: (1) Executive Steering Committee convened; (2) FRA working group has been chartered; (3) Program Goals are agreed upon; (4) Internal communication have been planned and initiated; (5) A pilot project life cycle design has been established; (6) Internal FRA Office of Safety (RRS) organization changes have been initiated; and (7) Advanced data analysis tools have been identified.

Under the slide, "Next Steps," Ms. Strang outlines the following: (1) Define pilot project selection procedures; (2) Develop budget; (3) Determine funding and procurement processes needed; (4) Develop generalized risk model; (5) Establish data securement processes; (6) Identify larger FRA organizational and process changes needed; and (7) Initiate communication with external stakeholders (industry management, labor, suppliers, and manufacturers).

Under the slide, "Safety Summit," Ms. Strang says on August 12, 2008, there will be a meeting to introduce this program to the external stakeholders, including railroad Chief Executive Officers, railroad industry groups, labor organizations, and government agencies.

Jo Strang (FRA) asks for questions.

With no questions of Jo Strang on FRA's Risk Reduction Program, Chairperson Cothen says the next two meetings of the full RSAC are scheduled for September 10, 2008, and December 10, 2008, in the Board Room of the National Housing Center of the National Association of Home Builders, 1201 15<sup>th</sup> Street, N.W., Washington, D.C. 20005.

Chairperson Cothen asks if there is any additional business that need to be brought before the full RSAC?

With no further business, Chairperson Cothen adjourns the 35<sup>th</sup> meeting of the

Railroad Safety Advisory Committee at 2:00 pm.

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M E E T I N G   A D J O U R N E D   2:00 P.M.

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*These minutes are not a verbatim transcript of the proceedings. Also, Microsoft PowerPoint overhead view graphs and handout materials distributed during presentations by RSAC Working Group Members, FRA employees, and consultants, generally become part of the official record of these proceedings and are not excerpted in their entirety in the minutes.*

Respectively submitted by John F. Sneed, Event Recorder.